

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

|  |                               |
|--|-------------------------------|
| <b>GWENDOLYN P. MCQUIRTER, and</b>     | )                             |
| <b>CHARLES E. MCQUIRTER,</b>           | )                             |
|  | )                             |
| Plaintiffs,                            | )                             |
|  | )                             |
| v.                                     | )                             |
|  | )                             |
| <b>CITY OF MONTGOMERY,</b>             | )                             |
| <b>K.C. BENTLEY, and RON COOK,</b>     | )                             |
|  | )                             |
| Defendants and Third-Party Plaintiffs, | )                             |
|  | )                             |
| v.                                     | ) Case No. 2:07-cv-234-MEF-WC |
|  | )                             |
| <b>TIFFANY MICHELE RILEY, and</b>      | )                             |
| <b>ROOSEVELT PERKINS,</b>              | )                             |
|  | )                             |
| Third-Party Defendants.                | )                             |

**REPLY OF DEFENDANTS TO PLAINTIFFS' RESPONSE TO  
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Defendants, City of Montgomery, K.C. Bentley and Ron Cook, adopt and incorporate the law and argument set forth in Defendants' Response to Plaintiff Gwendolyn McQuirter's Motion for Partial Summary Judgment and Defendants' Motion for Summary Judgment.

Additionally, Defendants submit the following Reply to Plaintiffs' Response to Defendants' Motion for Summary Judgment, stating unto the Court the following:

**I. THE DRIVERS PRIVACY PROTECTION ACT OF 1994 (“DPPA”) AND 42 U.S.C. §1983**

***A. DEFENDANTS DID NOT VIOLATE DPPA***

Defendants are authorized or permitted users of the information under the Driver's Privacy Protection Act of 1994 (“DPPA”) (18 U.S.C.A. §§ 2721-2725). As previously stated in Defendants'

Motion for Summary Judgment, use of personal information from state motor vehicle records by law enforcement for carrying out its functions is one of the specific permitted uses found in DPPA.

Plaintiffs argue that Defendants violated DPPA in that § 2721 (c) prohibits Defendants from redisclosure of the photo. Section 2721 (b) (1) states in its entirety, “**For use by any** government agency, including any court or **law enforcement agency, in carrying out its functions**, or any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions.” (Emphasis added). Section 2721 (c) provides, “An **authorized recipient of personal information** (except a reception under subsection (b)(11) or (12) **may** resell or **redisclose the information only for use permitted under subsection (b)** (but not for uses under subsection (b) (11) or (12))...”. (Emphasis added).

The referenced subsections of § 2721 provide in (b)(11) “For any other use in response to requests for individual motor vehicle records if the State has obtained the express consent of the person to whom such personal information pertains”, and (b) (12) “For bulk distribution for surveys, marketing or solicitations if the State has obtained the express consent of the person to whom such personal information pertains.”

Defendants are authorized recipients under DPPA pursuant to § 2721 (b)(1) and do not fall within the exclusions in § 2721 (c). Plaintiffs have not submitted any evidence or authority to support that the actions of Bentley or Cook were not “for use” of a law enforcement agency carrying out its functions. The photo was obtained and released by Defendants while acting in their official capacity and carrying out their required duties. Defendants are members of law enforcement and may redisclose the information obtained for “for use” in carrying out the functions of the City of Montgomery Police Department.

Congress intended the DPPA “with respect to law enforcement agencies, [section 2721(b)(1)] should be interpreted so as not to in any way restrict or hinder law enforcement and crime prevention strategies,” even when those strategies might include releasing personal information to the general public. *Parus v. Kroepelin*, 402 F. Supp. 2d 999 (W.D. Wis. 2006).

Plaintiffs rely on the case of *Collier v. Dickinson*, 477 F. 3d 1306 (11<sup>th</sup> Cir. 2007) as instructive authority as it relates to DPPA and the present case. Such reliance is misguided. The *Collier* plaintiffs sued because the Florida Department of Highway Safety and Motor Vehicles sold personal information to mass marketers in violation of DPPA.

The *Collier* case is not comparable to the present case. Mass marketers are not specifically identified as permitted users under the Act like law enforcement. The Florida Department of Highway Safety and Motor Vehicles which is usually the creator and holder of the records sold personal information of the citizens to mass marketers.

Bentley used the Law Enforcement Tactical System (“LETS”) network system for the purpose of which it is intended to be used. LETS is provided by Alabama Criminal Justice Information Center (ACJIC) to the Montgomery Police Department and has data from the records of several different agencies. (*DX 5, Drinkard Affidavit*). LETS is used by Bentley and Cook as a law enforcement investigative tool or any other law enforcement purposes. (*DX 1, Bentley Depo. p. 88, lines 7 – 23; p. 103, lines 5 – 11; p. 105, line 16 to p. 108, line 15; p. 109, line 23 to p. 110, line 17; p. 112, line 14 to p. 113, line 7; p. 115 to p. 116, line 11 and DX 2, Cook Depo. pp. 61 - 65*).

As previously stated, use by law enforcement for carrying out its functions is one of the specific exceptions set out in the Act. Plaintiffs have nothing other than conclusory allegations to support their claim that the actions of Bentley or Cook were not those of a law enforcement agency

carrying out its functions. Conclusory allegations cannot interpose genuine issues of material fact into the litigation so as to preclude entry of summary judgment. *Fed.Rules Civ.Proc.* Rule 56 (c). In light of the foregoing, Defendants Motion for Summary Judgment is due to be granted.

***B. DEFENDANTS ARE ENTITLED TO QUALIFIED IMMUNITY.***

As previously stated, Defendants have not violated DPPA. Bentley used the LETS system which is provided by the ACJIC for use by the Montgomery Police Department. (*DX 5, Drinkard Affidavit*). Defendants are authorized recipients for the information provided by DPPA and do not fall within the exclusions set forth in § 2721 (c).

Although Defendants did not violate DPPA, Bentley and Cook have clearly satisfied the discretionary authority criterion to be entitled to qualified immunity. Bentley and Cook were (a) pursuing a legitimate job-related function (that is, pursuing a job-related goal), (b) through means that were within their power to utilize.” *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1265 (11<sup>th</sup> Cir. 2004). Defendants were “acting within the scope of his discretionary authority” when the allegedly wrongful acts occurred and are therefore entitled to qualified immunity. *Gray ex rel. Alexander v. Bostic*, 458 F.3d 1295, 1303 (11<sup>th</sup> Cir. 2006).

“Once the official has established that he was engaged in a discretionary function, the plaintiff bears the burden of demonstrating that the official is not entitled to qualified immunity.” *Crosby v. Monroe County*, 394 F.3d at 1328, 1332 (11<sup>th</sup> Cir. 2004). Plaintiffs have failed to demonstrate that the Defendants are not entitled to qualified immunity.

***C. 42 U.S.C.A. §1983 MUNICIPAL LIABILITY***

Plaintiffs again base their argument on the fact that Defendants have violated DPPA. However, there is nothing to support such a claim. Bentley and Cook were acting in the line and

scope of their duties as police officers carrying out law enforcement functions. Plaintiffs cannot demonstrate a violation of the DPPA. In the present case, McQuirter cannot succeed on claims that would make the City of Montgomery liable under 42 U.S.C. § 1983.

For Plaintiffs to succeed on their claims against the City, they must show that the actions of Bentley and Cook were outside of the permitted use by law enforcement for carrying out its functions. Plaintiffs have submitted no authority to support such a claim. Bentley and Cook were compliant with DPPA. Plaintiffs only provide conclusory allegations that Bentley and Cook were not carrying out law enforcement functions. In light of the above, Defendants are entitled to summary judgment on all of Plaintiffs' federal claims.

## **II. STATE LAW CLAIMS**

### ***A. DEFENDANTS ARE ENTITLED TO STATE AGENT IMMUNITY IN PERFORMANCE OF DISCRETIONARY FUNCTION***

Plaintiffs contend that because Defendants violated DPPA, Defendants are not entitled to discretionary function immunity. Immunity from civil liability is provided by an officer engaged in an exercise in judgment in the performance of discretionary function duties. Plaintiffs submit only conclusory allegations to support that Defendants violated DPPA or that Cook and Bentley were not performing discretionary function duties. Bentley and Cook were exercising judgment in performing discretionary functions as police officers with the City of Montgomery and as such are entitled to state agent discretionary function immunity as to Plaintiffs' state law claims.

In their Brief, Plaintiffs contend that the Montgomery Police Department has a mandated policy of specific questions that must be asked to confirm the identity an individual. Specifically, Plaintiffs state, "In order to confirm the identity of the person arrested, the policy at MPD required the processing team to obtain the name, date of birth and social security number of the person

arrested, and run this information through the NCIC to determine whether the person had warrants or anything on them or not." (*Doc. 39, p. 20*).

Plaintiffs cite Cook's testimony as evidence indicating this policy however Plaintiffs did not submit entire page cited or previous page. It is clear that Plaintiffs' reliance on this testimony as a mandated policy of the Montgomery Police Department is in error. Cook described information that an officer should try to get from an individual when "contact" is made with them. Cook's specific testimony was as follows:

Q. All right. Is there any policy that you're aware of within the police department that says a person providing you with information as a public information officer is supposed to verify the identity of the person who is the subject of the information relayed to you?

MS. FEHL: Object to the form.

A. Rephrase our question.

Q. What about my question?

A. Can you repeat your question?

Q. I'll try.

MS. FEHL: Maybe if you could break it down.

Q. Is there a policy within the police department that upon arresting somebody, an officer is supposed to verify by some means the identity of the person arrested?

A. Yes.

Q. Is that a written policy?

A. Well, you learn in the academy what you're supposed to do when you make contact with a person.

Q. And what are you supposed to do?

A. You get their -- gather their information, run that information through NCIC.

Q. When you say gather the person's information, what information does that consist of?

A. You're going to ask him the name and possibly the date of birth. If at all possible, you might get their Social Security number.

Q. Any other information?

A. No.

(DX 2, *Cook Depo. p. 32, lines 7 – p. 33*).

Cook stated that an officer should gather information when you make contact with a person.

(DX 2, *Cook Depo. p. 33, line 5 – p. 34, line 23*). That is exactly what Bentley did. When Tiffany Riley was being processed Bentley asked Riley her name and she responded Gwendolyn McQuirter and informed Bentley how to correctly spell McQuirter. (DX 1, *Bentley Depo. p. 60, lines 6 - 10*). Riley responded without hesitation or pauses or anything that would indicate that she was being untruthful. (DX 1, *Bentley Depo. p. 60, line 4 – p. 61, line 12; p. 97, lines 7 - 17*).

Bentley never concluded at the time that she pulled the photo of Gwendolyn McQuirter that Tiffany Riley and Gwendolyn McQuirter were not the same people. (DX 1, *Bentley Depo. p. 89, lines 8 to p. 90, line 15; p. 92, line 8 to p. 93, line 5; p. 96, line 22 to p. 97, line 17; p. 98, lines 14 - 21*). Prior to September 2006, Bentley did not know Tiffany Riley or Gwendolyn McQuirter. (DX 1, *Bentley Depo. p. 53, lines 4 – 22; p. 70, lines 5-9* ).

Bentley used the Law Enforcement Tactical System (“LETS”) network system for the purpose of which it is intended to be used. LETS is provided by Alabama Criminal Justice Information Center (ACJIC) to the Montgomery Police Department and has data from the records of several different agencies. (DX 5, *Drinkard Affidavit*). LETS is used by Bentley and Cook as a law

enforcement investigative tool or any other law enforcement purposes. (*DX 1, Bentley Depo. p. 88, lines 7 – 23; p. 103, lines 5 – 11; p. 105, line 16 to p. 108, line 15; p. 109, line 23 to p. 110, line 17; p. 112, line 14 to p. 113, line 7; p. 115 to p. 116, line 11 and DX 2, Cook Depo. pp. 61 - 65*).

The affidavit submitted by Plaintiffs of Third Party Defendant, Tiffany Riley, supports that Tiffany Riley gave false information to law enforcement but does not present any genuine issue of material fact in the present case. There is no evidence or testimony to support that, “... the policy at MPD required the processing team to obtain the name, date of birth and social security number of the person arrested, and run this information through the NCIC to determine whether the person had warrants or anything on them or not.” (*Doc. 39, p. 20*). There was no mandated policy that required Bentley to ask three or four specific questions to confirm the identity of an individual as contended by the Plaintiffs in their brief. Plaintiffs rely on conclusory allegations that Cpl. Bentley was required by policy to specifically ask the name, date of birth and social security number of the person arrested, and run this information through the NCIC.

Bentley and Cook were “engaged in the performance of discretionary functions at the time the alleged torts occurred”. Their acts are in the exercise of judgment and involved choosing what was just and proper under the circumstances. *See Ex parte City of Gadsden*, 781 So. 2d 936, 938 (Ala. 2000). The Alabama Supreme Court in *Ex parte Cranman*, 792 So.2d 392, 405 (Ala.2000) expressed exceptions that a state agent shall not be immune from civil liability in his or her personal capacity:

- (1) when the Constitution or laws of the United States, or the Constitution of this State, or laws, rules, or regulations of this State enacted or promulgated for the purpose of regulating the activities of a governmental agency require otherwise; or
- (2) when the State agent acts willfully, maliciously, fraudulently, in bad faith,

beyond his or her authority, or under a mistaken interpretation of the law.

Plaintiffs have not produced any evidence that would show, or even allow an inference that Defendants in any way willfully, maliciously, fraudulently, in bad faith, beyond his or her authority, or under a mistaken interpretation of the law.

Section 6-5-338(b), *Code of Alabama*, 1975 provides “immunity not only to peace officers but governmental units and agencies authorized to appoint peace officers.” The statute is explicit that liability will not attach unless a police officer acts willfully or maliciously. After all, “if a municipal police officer is immune pursuant to § 6-5-338(a), then, pursuant to § 6-5-338(b), the city by which he is employed is also immune.” *City of Crossville v. Haynes*, 925 So.2d 944, 955 (Ala.2005). Therefore, Defendants City of Montgomery, Bentley and Cook are entitled to summary judgment on all of Plaintiffs’ state law claims.

***B. DEFENDANTS HAVE NOT WAIVED PRIVILEGE PURSUANT TO § 13A-11-161***

Plaintiffs cite *Ex Parte Blue Cross and Blue Shield of Alabama*, 773 So.2d 475 (Ala. 2000) as authority that privilege is an affirmative defense for which defendant bears the burden of pleading and proof. Defendants do not agree that because the statutory privilege provided in ALA. Code § 13A-11-161 was not specifically affirmatively pleaded in the Answer with Affirmative Defenses to the Second Amended Complaint that the privilege has been waived and should not be considered by the Court. There were general affirmative and immunity defenses pleaded by Defendants in the Answer to the Second Amended Complaint.

Because of the qualified and discretionary function immunity provided to Defendants in this case, the decision of whether the publication is privileged may be a moot point. However, the privilege was raised prior to trial of this matter in Defendants Motion for Summary Judgment. The

Plaintiffs filed a responsive argument. Defendants submit that pursuant to Rule 15, *Federal Rules of Civil Procedure*, the Court may allow the Defendants to amend their Answer to conform to the evidence already before the Court in this case and specifically plead privilege pursuant to § 13A-11-161 in the Affirmative Defenses since it has been argued.

The information provided by Defendants was a fair and impartial report of an investigation and prostitution detail by MPD. *ALA. Code* § 13A-11-161 does not limit, by its terms, the privilege defense to “media” defendants. *See Ex Parte Blue Cross and Blue Shield of Alabama*, 773 So. 2d 475 (Ala. 2000) (Insurance company claims qualified privilege defense when company sent letters to two of their insureds stating their dentist performed procedures the scope of his license).

In *Banks, Finley, White & Co. v. Wright*, 864 So. 2d 324 (Ala. Civ. App. 2001), the Court of Civil appeals held:

The test for determining whether a conditional or qualified privilege is available under such circumstances has been expressed as follows.

" 'Where a party makes a communication, and such communication is prompted by duty either to the public or to a third party, or the communication is one in which the party has an interest, and it is made to another having a corresponding interest, the communication is privileged, if made in good faith and without actual malice.... The duty under which the party is privileged to make the communication need not be one having the force of legal obligation, but it is sufficient if it is social or moral in its nature and defendant in good faith believes he is acting in pursuance thereof, although, in fact he is mistaken.' " *Willis v. Demopolis Nursing Home, Inc.*, 336 So.2d 1117 (Ala.1976)(quoting *Berry v. City of New York Ins. Co.*, 210 Ala. 369, 98 So. 290 (1923), cited in *Browning v. Birmingham News*, 348 So.2d 455 (Ala.1977)).

In *Wiggins v. Mallard*, 905 So.2d 776 (Ala. 2004), a private citizen brought a defamation action against town, town police chief, newspaper, and editor of newspaper after newspaper published article stating that citizen had been arrested on drug charges when, in fact, citizen had never been arrested on such charges. The police chief and city asserted qualified privilege defense

however the issue was not raised on appeal. The Court entered summary judgment for the town, the chief, the newspaper and editor.

The Alabama Supreme Court reversed and remanded the case based on the testimony of the police chief and the newspaper editor. The Court stated that the unequivocal testimony of each defendant is substantial evidence of the untruthfulness of the other's testimony. It is within the exclusive province of the jury to determine which version is true and held:

- (1) genuine issue of material fact as to whether newspaper article naming private citizen as the person arrested on drug charges was accurate and, therefore, privileged precluded summary judgment for newspaper and its editor on citizen's defamation claim, and
- (2) as matter of apparent first impression, a private-party-defamation plaintiff may overcome a qualified-immunity defense with testimony indicating that the defendant intentionally lied about the plaintiff.

Plaintiffs submit in their argument that Defendants failed to cite one case that § 13A-11-161 applies to publication of a defamatory accusation by a police officer. However Plaintiffs have failed to cite one case that § 13A-11-161 does not apply to Defendants. Defendants are entitled to summary judgment as a matter of law.

**V.**  
**CONCLUSION**

All of Plaintiffs' claims against Defendants City of Montgomery, Cpl. K.C. Bentley and Lt. Ron Cook are due to be dismissed. Plaintiffs' Motion for Partial Summary Judgment is due to be denied and Defendants' Motion for Summary Judgment is due to be granted.

**A. BENTLEY AND COOK**

Defendants Bentley and Cook did not violate the Driver's Privacy Protection Act, 18 U.S.C. §§ 2721 - 2725. The actions of Bentley and Cook were within their discretionary authority in the

line and scope of their law enforcement duties. Plaintiff makes only conclusory allegations that no law enforcement function was served in obtaining and releasing the photograph. Bentley was required to retrieve photos as part of her paperwork on every arrest every day. Cook's actions of submitting selected public information and photographs to the media regarding incidents of public interest of a law enforcement special detail or to expose a public safety issue is a legitimate law enforcement function and crime prevention strategy and a routine duty for the public information officer. The actions of both Bentley and Cook are permitted under section 2721(b)(1). Conclusory allegations cannot interpose genuine issues of material fact into the litigation so as to preclude entry of summary judgment. *Fed.Rules Civ.Proc.* Rule 56 (c).

Defendants Bentley and Cook are entitled to qualified immunity. To be entitled to qualified immunity, a defendant must prove that he was "acting within the scope of his discretionary authority" when the allegedly wrongful acts occurred. *Gray ex rel. Alexander v. Bostic*, 458 F.3d 1295, 1303 (11<sup>th</sup> Cir. 2006). In assessing whether a defendant's challenged actions are within the scope of his discretionary authority, courts examine "whether the government employee was (a) pursuing a legitimate job-related function (that is, pursuing a job-related goal), (b) through means that were within his power to utilize." *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1265 (11<sup>th</sup> Cir. 2004).

Bentley and Cook are also entitled to state-agent discretionary function immunity pursuant to section 6-5-338, *Code of Alabama*, 1975 which statutorily provides law enforcement officers with immunity from state law tort claims arising out of acts committed while the law enforcement officers engage in the performance of discretionary functions.

The event at issue in this case is precisely the situation for which discretionary function

immunity under § 6-5-338 and qualified immunity under § 1983 were designed. Those statutes protect police and municipal officials from tort liability when acting within the line and scope of their duties.

The publication of the information released by Defendants was a fair and impartial report of an official investigation and prostitution detail by MPD and subject to the privilege provided by § 13A-11-161.

**B. CITY OF MONTGOMERY**

For liability pursuant to 42 U.S.C. § 1983 to attach to a municipality, it must be shown that the municipal official or employee caused the deprivation of one's statutory or constitutional rights by acting pursuant to official governmental policy. McQuirter has alleged a § 1983 claim for violation of the Driver Privacy Protection Act ("DPPA"), codified at 18 U.S.C. §2721 - 2725. However, there is nothing to support such a claim that Defendant officers violated said statute. Bentley and Cook were acting in the line and scope of their duties as police officers carrying out law enforcement functions.

*ALA. Code* §11-47-190 (1975) provides that an action against a municipality may only lie for the "neglect, carelessness, or unskillfulness" of its agents. The City may claim immunity and not be held liable for wanton and intentional acts of its agents in accordance with both statutory and case law. *Hilliard v. City of Huntsville*, 585 So. 2d 889 (Ala. 1991). Additionally, Section 6-5-338(b), *Code of Alabama*, 1975 provides "immunity not only to peace officers but governmental units and agencies authorized to appoint peace officers."

Summary Judgment in favor of Defendants City of Montgomery, K.C. Bentley and Ron Cook is proper and all claims against them should be dismissed.

Respectfully submitted this the 26<sup>th</sup> day of November, 2007.

/s/ Kimberly O. Fehl  
Kimberly O Fehl (FEH001)

**OF COUNSEL:**

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**CERTIFICATE OF SERVICE**

I hereby certify that foregoing has been served upon the following by PACER/electronic filing or by U. S. Mail, postage prepaid on this 26<sup>th</sup> day of November, 2007:

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/s/ Kimberly O. Fehl  
Of Counsel

**COPY**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

5 GWENDOLYN P. MCQUIRTER,  
6 et al.,

7 Plaintiffs,

8 vs.

CASE NUMBER  
2:07-cv-00234-MEF-WC

9 CITY OF MONTGOMERY, et al.,  
et al.,

10 Defendants.

11

12

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14

\* \* \* \* \*

15

DEPOSITION OF KRISTEN CAROLINE BENTLEY,

16

taken pursuant to stipulation and agreement

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before Heather Barnett, Court Reporter and

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Commissioner for the State of Alabama at Large,

19

in the Offices of Dunn, King & Associates, 2800

20

Zelda Road, Suite 100-2, Montgomery, Alabama, on

21

Friday, June 29, 2007, commencing at

22

approximately 10:40 a.m.

23

\* \* \* \* \*

DEFENDANT'S  
EXHIBIT

DUNN, KING & ASSOCIATES  
Montgomery, Alabama  
(334) 263-0261 or (800) 359-8001

1 has been arrested multiple times, I wouldn't  
2 need to look at a picture, because I already  
3 know what her name is.

4 Q. Let's talk about Tiffany Riley, then.

5 A. I did not know her name.

6 Q. She was sitting there with you on the  
7 processing team, wasn't she, as being one of  
8 the people arrested?

9 A. I was sitting in front of a computer, and I  
10 had Ms. Riley sit in a chair beside me. I  
11 was getting the information from her and  
12 asked her for her name, and she told me her  
13 name was Gwendolyn McQuirter. Obviously, I  
14 did not know how that was spelled.

15 Q. You didn't know her at that time, did you, by  
16 her true name?

17 A. No, sir.

18 Q. You had never had any dealings with her  
19 before that?

20 A. Not that I'm aware of unless it's been some  
21 years back and I just don't really remember  
22 her.

23 Q. Did you ask her for her identification?

DUNN, KING & ASSOCIATES

Montgomery, Alabama

(334) 263-0261 or (800) 359-8001

1 location where you were on the processing  
2 team, tell me what you recall about your  
3 interaction with her.

4 A. I remember Ms. Riley sitting beside me. Like  
5 I said, I was sitting in front of the  
6 computer; and I asked her her name, and she  
7 told me Gwendolyn McQuirter. Obviously, I  
8 didn't know how to spell that last name, how  
9 it was intended for her spell it. And I'm  
10 certain that I asked her how to spell it.  
11 And she told me -- asked her her birth date;  
12 she gave me Mrs. McQuirter's birth date. I'm  
13 certain that I asked her -- certain that I  
14 asked her her Social Security number, and I  
15 don't recall exactly what she told me. As  
16 best I can remember, I think that she told me  
17 that she didn't know her -- couldn't remember  
18 her Social Security number. I know she  
19 didn't give me one. Had she given me one, I  
20 would have known that that wasn't the correct  
21 identity because the Social Security number  
22 of Mrs. McQuirter is in the computer system.  
23 So when she told me her name was Gwendolyn

1                   McQuirter and I asked her how to spell it and  
2                   I pull up Mrs. McQuirter's information, she  
3                   gives me the correct spelling, the correct  
4                   birth date. And as far as I know, she -- as  
5                   far as I remember, she didn't recall the  
6                   social security number. And I asked her the  
7                   address, and she gave me the address, which  
8                   was the same address as what Mrs. McQuirter's  
9                   is, and gave me the information as if it were  
10                   her own. No hesitation, no pauses, no --  
11                   nothing that lead me to believe that she was  
12                   being untruthful.

13                   Q. So while you're talking with Ms. Riley,  
14                   you're pulling up information on a computer?

15                   A. Correct.

16                   Q. And was this on what computer system?

17                   A. AS-400, the in-house computer system of the  
18                   police department.

19                   Q. The one that shows photographs?

20                   A. If there's a photograph that's been taken.

21                   Q. All right. And I assume since you just now  
22                   testified you were inputting information and  
23                   information such as Social Security numbers

1                   birth date I know because I was reading it  
2                   when she told it to me. How I remember  
3                   certain things and not others, I couldn't  
4                   explain that to you.

5                   Q. Did you know Gwendolyn McQuirter before  
6                   September of '06?

7                   A. No, sir.

8                   Q. Ever had any contact with her?

9                   A. Not that I'm aware of.

10                  Q. All right. Anything else that you recall  
11                  about your contact with Tiffany Riley other  
12                  than what we've gone over?

13                  A. As far as on that date or later on?

14                  Q. Ever.

15                  A. That was on Friday. When I returned to work  
16                  on Tuesday -- and I don't remember who was  
17                  the first person that indicated to me that  
18                  that was not her correct name, but somebody  
19                  indicated that Mrs. McQuirter's husband had  
20                  called and was complaining because his wife's  
21                  picture was on the news. And he had seen  
22                  that and said that that wasn't -- that his  
23                  wife wasn't arrested for prostitution; that

1                   there's a photograph in there. See, there's  
2                   not some magical fail-proof way to say that  
3                   somebody couldn't use somebody else's name.

4   Q. Well isn't there a fail-proof way? I take it  
5                   you're familiar with LETS, aren't you?

6   A. Yes, sir.

7   Q. What is LETS?

8   A. It is what is the Law Enforcement Tactical  
9                   System, I believe the name of it is.

10   Q. And through LETS, you can access people's  
11                   driver's license photograph, can't you?

12   A. Yes, sir.

13   Q. You can access other information on a  
14                   person's driver's license, can't you?

15   A. Yes, sir.

16   Q. That information is provided to MPD through  
17                   the Department of Public Safety, isn't it?

18   A. I would assume so.

19   Q. So when we talk about the McQuirter matter,  
20                   you had the means to go through LETS and pull  
21                   up Gwendolyn McQuirter's photograph off her  
22                   driver's license, didn't you?

23   A. Correct.

1 Q. And in fact, you did that, didn't you?

2 A. Yes, sir.

3 Q. And that photograph on Gwendolyn McQuirter's  
4 driver's license clearly shows that Tiffany  
5 Riley was not Gwendolyn McQuirter, didn't it?

6 MS. HIGHLEY: Object to the form.

7 A. Not to me, no, sir.

8 Q. What do you mean not to you? They look like  
9 they're the same?

10 MS. HIGHLEY: Object to the form.

11 A. I can't -- to determine that that was or was  
12 not her, I couldn't tell you that that wasn't  
13 her. I'm not saying that they look exactly  
14 alike by any stretch of the imagination, but  
15 they're not so far off that I did not -- in  
16 Gwendolyn McQuirter's driver's license  
17 photograph, obviously, the hair is not the  
18 same; but hair is something that can be  
19 changed. You can look at her facial features  
20 and look at what the picture looks like from  
21 the driver's license photograph, and then  
22 look at the photograph that we've taken.

23 When you look at the way that ours print out,

1           they're not always looking at it on a  
2           computer screen; may not look the same way  
3           that it does when you print it out.

4       Q.    Let me make sure I understand your testimony,  
5           now. Your testimony is when you looked at  
6           Gwendolyn McQuirter's driver's license  
7           photo --

8       A.    Yes, sir.

9       Q.    -- and you considered that photo in  
10           conjunction with seeing Tiffany Riley in  
11           person --

12      A.    Yes, sir.

13      Q.    -- you did not conclude they were different  
14           people?

15      A.    Correct.

16      Q.    Okay. You recognize this lady right here?  
17           I'm going to mark this as an Exhibit #3.

18      A.    Yes, sir.

19      Q.    Who is that?

20      A.    That's Tiffany Riley.

21      Q.    You're certain of that?

22      A.    Yes, sir.

23      Q.    Do they look the same because they're both

1 A. No, sir.

2 Q. Okay. All right. Let me show you Exhibit  
3 #1, page 13 to Ron Cook's deposition. Do you  
4 recognize that lady?

5 A. I recognize that as the photograph that was  
6 on the driver's license on Gwendolyn  
7 McQuirter.

8 Q. And just so I'm clear, your testimony is page  
9 13 of Exhibit #1 and page 9 of Exhibit #3,  
10 you can't tell those are different people?  
11 Is that your testimony?

12 A. I couldn't at the time. I wasn't certain  
13 that the -- that Ms. Riley couldn't have --  
14 that that couldn't have been Ms. Riley who  
15 had a photograph taken at some point and  
16 didn't necessarily look exactly the same. A  
17 driver's license is good for four years, an  
18 ID card is good for longer. And I'm not  
19 exactly certain how long. So I could take my  
20 driver's license photo today and still have  
21 that same driver's license four years from  
22 now, and I may not look the same four years  
23 from now. So that's -- you know, when

1 exactly it was taken, I don't know that I  
2 ever necessarily looked at that. But I  
3 wasn't under the impression at the time that  
4 that wasn't the same person. I was under the  
5 impression that it was the same person.

6 Q. Because the date the driver's license photo  
7 was issued to Mrs. McQuirter was information  
8 you received off the LETS system, wasn't it?

9           A. It is on there somewhere, but I don't -- like  
10           I said. I don't remember what that date was.

11 Q. You just don't remember --

12 MS. HIGHLEY: Object to the form.

13 A. I don't remember looking at it.

14 Q. And looking at page 13 and page 9, what can  
15 you identify in these photographs that even  
16 looks anywhere similar as far as being the  
17 same person? Can you point to anything?

18 A. They're similar that I see.

19 Q. What are the similarities you see?

22 Q. Okay. What else?

23 A. The shape of the face is kind of more of a

1 more defined, I should say.

2 Q. Which photograph are the features more  
3 defined?

4 A. In Ms. Riley's.

5 Q. Ms. Riley looks like she's sort of heavy. Is  
6 she heavy?

7 A. She's a pretty good size.

8 Q. She doesn't look like your typical crack  
9 smoker, does she?

10 A. Not typically, no, sir. It wasn't certain to  
11 me that she might not -- because she had not  
12 been arrested for prostitution before, that  
13 she might have started to possibly smoke  
14 crack cocaine and hadn't been doing it for a  
15 long time. The other girls will tell you  
16 that they've been doing it for a long time,  
17 and you know this because you've gotten into  
18 contact with them for a long time; but most  
19 of them did not start out the size that they  
20 are now and did not look the same when they  
21 originally started as a prostitute.

22 Q. Okay. So just so I'm clear, when you  
23 received Mrs. McQuirter's photograph through

1 the LETS system and you considered Tiffany  
2 Riley's appearance, did you actually stop and  
3 pause and say, I'm not sure this is the same  
4 person, or did that thought ever enter your  
5 mind?

6 A. I didn't believe that it wasn't the same  
7 person at that point. I believed that  
8 Ms. Riley was giving me the correct  
9 information. When she provided the  
10 information, she provided it to me rather  
11 matter of factly. And in the manner that she  
12 provided it to me, I believed what she was  
13 saying because, like I said, she didn't  
14 hesitate. She said I'm Gwendolyn McQuirter,  
15 and can you spell that, and she spits it out  
16 and gives me this information as a matter of  
17 fact, not with any hesitation.

18 Q. That's the way people that lie normally do  
19 it, isn't it?

20 A. No, sir.

21 MS. HIGHLEY: Object to the form.

22 Q. People from your experience that lie normally  
23 hesitate, and it's obvious they're lying?

1           A. Typically, there would be some indication  
2           they might not know the birth date  
3           correctly. They might be off by a year or  
4           something of that sort. You know, it would  
5           not be so common that I'm going to be able to  
6           give you a name, birth date and address that  
7           is somebody else's and spit it out to you  
8           like it's my own. I can't think of anybody  
9           off the top of my head right now that I could  
10           give that information on; like that I could  
11           tell you that I'm so and so, give you the  
12           name, give you the address is give you their  
13           birth date.

14           Q. And I don't think you answered my question,  
15           so let me ask it again. Did the thought ever  
16           enter your mind after you received Gwendolyn  
17           McQuirter's picture through the LETS system,  
18           that these people may not be the same people?

19           A. No, sir.

20           Q. Did that thought ever enter your mind?

21           A. No, sir.

22           Q. Okay. All right. And what was the reason  
23           you went to the LETS system to retrieve

1 photograph from the LETS system?

2 A. No, sir.

3 Q. All right. Let me try --

4 A. I'm saying that --

5 Q. Hang on just a minute, because I'm trying to  
6 ask real simple questions. After you spoke  
7 with the narcotics officer that we just  
8 talked about -- after that, did you get  
9 Mrs. McQuirter's photograph off the LETS  
10 system?

11 A. Yes, sir.

12 Q. Okay. How long after?

13 A. I'm not certain the exact time frame.

14 Q. Would it have been hours later, minutes  
15 later, days later?

16 A. It was not hours or days. It probably would  
17 have been within -- after speaking to them,  
18 maybe within an hour.

19 Q. Okay. And what was the urgency in obtaining  
20 Mrs. McQuirter's photograph?

21 A. We were completing all the paperwork that we  
22 had to do for the evening in order to turn in  
23 to the captain and the major. And we had to

1 A. Only if the camera system was down.

2 Q. Okay. And as far as you know, that was okay  
3 with your supervisors for you to do that?

4 A. Yes, sir.

5 Q. To your knowledge, were they aware that you  
6 did that?

7 A. I'm not certain. I know that Lieutenant  
8 Crockett was there. Lieutenant Crockett was  
9 aware that we did not have the photos taken  
10 from that day because the system was not  
11 working. Whether or not he explained that to  
12 the captain and the major, I'm uncertain.

13 Q. You're talking about Ms. McQuirter when you  
14 said Lieutenant Crockett was aware of it or  
15 are you talking about the other times?

16 A. No, sir. What you were asking me was about  
17 using the previous photographs.

18 Mrs. McQuirter's was a LETS photograph  
19 because that -- all of the other girls had  
20 been arrested previously, so all of their  
21 photographs were photographs that were taken  
22 previously. Lieutenant Crockett was aware of  
23 that. Lieutenant Crockett also would have

1                   been aware of the fact that Mrs. McQuirter's  
2                   photograph from LETS was used because she  
3                   didn't have a photograph in the system.

4                   Q. Why would Lieutenant Crockett have been aware  
5                   of it or how was he aware of it?

6                   A. I believe he was standing over by my desk,  
7                   and I explained to him that I did not have a  
8                   photograph of what I thought was  
9                   Ms. McQuirter at the time and that I was  
10                   going to have to use a LETS photograph.

11                   Q. So you just said I believe he was standing at  
12                   my desk, and then you went through a  
13                   conversation y'all had. Did y'all have the  
14                   conversation or not?

15                   MS. HIGHLEY: Object to the form.

16                   Q. Did y'all have that conversation?

17                   A. Yes, sir.

18                   Q. Did you remember him standing by your desk  
19                   when you had that conversation?

20                   A. Yes, sir.

21                   Q. All right. And you remember him standing  
22                   there near your desk as you accessed the LETS  
23                   system and retrieved Mrs. McQuirter's

1 photograph; is that right?

2 A. I'm not certain that he was still standing  
3 there at the point where I retrieved it. He  
4 was standing there when I expressed to him  
5 that I did not have a photograph of  
6 Mrs. McQuirter and that I was going to have  
7 to try to see if there was one on LETS.

8 Q. Did he tell you it was okay to go ahead or  
9 what was his response?

10 A. He just says okay.

11 Q. And you took that to mean it was okay for you  
12 to do that?

13 A. Certainly.

14 Q. Okay. Now, are there only certain people  
15 that can access the LETS system or can  
16 anybody use it?

17 A. You would have to be law enforcement and you  
18 would have to be registered with LETS.

19 Q. Were you registered when you accessed it?

20 A. Yes, sir.

21 Q. And you had accessed it before you did it in  
22 Mrs. McQuirter's case?

23 A. Yes, sir.

1 Q. Okay. And for what law enforcement purpose  
2 were you accessing the LETS system?

3 A. In order to complete my duties for the day  
4 and take the photograph and put it on the  
5 paper to turn in to the captain and the  
6 major.

7 Q. Okay. And in your opinion, that was a  
8 legitimate law enforcement purpose to access  
9 Mrs. McQuirter's driver's license photo?

10 A. Yes, sir. I'm required to do that and turn  
11 it in at the end of day; or anybody that has  
12 an arrest is required to do that, not  
13 necessarily from LETS but to turn in the  
14 photograph whether it be from LETS or from  
15 the AS-400 system.

16 Q. Okay. And you also wanted to forward that  
17 out to be distributed to the media, didn't  
18 you, or was that --

19 A. No, sir, that's not anything that involves  
20 me.

21 Q. Okay. You're aware the photographs were  
22 released to the media, aren't you?

23 A. When I saw it on TV, yes, sir.

1 Q. Do you remember seeing Mrs. McQuirter's  
2 picture on TV?

3 A. Yes, sir. They had photographs of all the  
4 prostitutes that were arrested that day that  
5 they showed.

6 Q. But Mrs. McQuirter wasn't one of the  
7 prostitutes arrested, was she?

8 A. No, sir.

9 Q. Somebody messed up, didn't they?

10 MS. HIGHLEY: Object to the form of the  
11 question.

12 Q. Did somebody mess up or was she a prostitute  
13 that was arrested?

14 A. No. Ms. Riley provided her information;  
15 therefore, that's what brought Mrs. McQuirter  
16 into the situation.

17 Q. So Ms. Riley messed up?

18 A. Yes, sir.

19 Q. Did you mess up?

20 A. No, sir.

21 Q. You didn't do anything wrong?

22 A. No, sir.

23 Q. Okay. Is there a policy at the MPD as to

1 when you can use the LETS system and for what  
2 purpose?

3 A. You would have to use it for a law  
4 enforcement purpose. Like you wouldn't --  
5 let's say I met Allison out somewhere. I  
6 wouldn't obviously say, you know, I met this  
7 girl Allison, let me show you her picture,  
8 and pull up her picture from LETS to show  
9 somebody, because that would not be for any  
10 purpose law enforcement-related. If it's  
11 something that's required by me -- if I'm  
12 required to pull up a photograph of somebody  
13 to put on a piece of paper for my major and  
14 my captain and turn that in at the end of the  
15 evening, and I pull up a LETS photograph and  
16 put it on there, then that's legitimate for  
17 me to do that.

18 Q. Did you tell Lieutenant Crockett -- is that  
19 the correct name? I just had a flashback of  
20 Miami Vice. Was his name Lieutenant  
21 Crockett?

22 A. It is.

23 Q. Did you tell Lieutenant Crockett as he stood

1 Q. Where did that come from?

2 A. That was taken on the 19th when she was  
3 arrested for giving a false name.

4 Q. So y'all never got a booking photograph when  
5 these 10 people were arrested for  
6 prostitution? There was never a booking  
7 photograph taken of any of them; is that  
8 right?

9 A. Not that I'm aware of. I don't believe  
10 there's any of them in there. There's only  
11 previous booking photographs, but I don't  
12 believe there's any that were from that  
13 date.

14 Q. All right. And did you tell me that you had  
15 utilized the LETS system prior to  
16 Mrs. McQuirter's case in retrieving  
17 photographs of people?

18 A. Yes, sir.

19 Q. About how many times had you done that?

20 A. I'm not certain.

21 Q. More than 10?

22 A. Yes, sir.

23 Q. More than 50?

1 A. It's possible. I really don't know how many.

2 Q. What would be the normal circumstance that

3 you would pull a photograph off the LETS

4 system?

5 A. If we didn't have a photograph -- if I needed

6 to obtain a photograph of that person and

7 there was not one in the AS-400 system.

8 Q. Why wouldn't you just use the booking

9 photograph?

10 A. If the booking photograph was in the AS-400

11 system, I would use it; but if it's not in

12 there, I can't use it.

13 Q. So there's been a lot of times when the

14 cameras don't work at the jail? Is that what

15 you're saying?

16 A. I wouldn't be able to quantify how many

17 times. I don't know that it's a lot or not a

18 lot or -- there are times when the camera

19 system as a whole throughout the city -- I

20 mean throughout the police department --

21 there are times when that camera system does

22 not work. How many times, I cannot tell

23 you. The majority of the time when we try to

1                   assumed that they were going to be  
2                   photographed when they got to jail. There  
3                   would have been no reason why we didn't  
4                   believe that until we found out that it  
5                   wasn't just our system that didn't work; it  
6                   was the system as a whole that didn't work.  
7                   So we wouldn't have taken a picture with a  
8                   digital camera like that.

9                   Q. Any particular reason why you didn't go down  
10                   to the police department when you discovered  
11                   there was a problem and take photographs with  
12                   this little digital camera you had?

13                   A. I didn't feel like there was a need to do  
14                   that at the time.

15                   Q. You thought it would be easier to pull  
16                   Mrs. McQuirter's photograph off the LETS  
17                   system; is that right?

18                   A. Right.

19                   Q. Okay. Has any supervisor or anybody really  
20                   at the MPD told you in the past that if  
21                   there's trouble getting a booking photograph  
22                   to feel free to go on the LETS system to get  
23                   the photograph? Has anybody ever told you

1 that?

2 A. I wouldn't necessarily say they said it in  
3 those exact words, but they have indicated  
4 that they required that when I turned in this  
5 paperwork that's required of me at the end of  
6 the evening, that I turn in a photograph of  
7 that person whether it be something that was  
8 taken from the AS-400 system, something that  
9 was taken from LETS, something that was taken  
10 off a digital camera. Whatever the case may  
11 be, there's going to be a photograph turned  
12 in at the end of the evening.

13 Q. Okay. Were you at all involved in the  
14 release of Mrs. McQuirter's photograph to the  
15 media?

16 A. No, sir.

17 Q. Were you consulted about that before it was  
18 released?

19 A. No, sir.

20 Q. You delivered the photograph to the major and  
21 the captain, right?

22 A. Yes, sir.

23 Q. All right. Did you personally give it to him

1

**COPY**

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE MIDDLE DISTRICT OF ALABAMA  
3                   NORTHERN DIVISION

5 GWENDOLYN P. MCQUIRTER,  
et al.,

**Plaintiffs,**

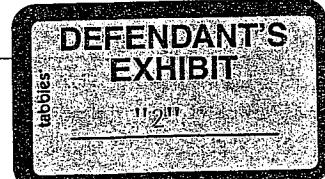
vs. 2:07-cv-00234-MEF-WC

9 CITY OF MONTGOMERY, et cet.,  
et al.,

10 Defendants.

15 DEPOSITION OF RONALD COOK, JR., taken  
16 pursuant to stipulation and agreement before  
17 Heather Barnett, Court Reporter and Commissioner  
18 for the State of Alabama at Large, in the Offices  
19 of Dunn, King & Associates, 2800 Zelda Road,  
20 Suite 100-2, Montgomery, Alabama, on Friday, June  
21 29, 2007, commencing at approximately 9:21 a.m.

\* \* \* \* \* \* \* \* \* \* \* \*



1 A. I started law enforcement in '94. I've made  
2 a lot of contacts since then. So  
3 specifically or in a roundabout way, I can't  
4 recall.

5 Q. Can't even estimate it for me?

6 A. I can't even estimate it.

7 Q. Is there a policy at the MPD that says  
8 anything about verifying somebody's identity  
9 before you would issue a press release as a  
10 public information officer?

11 A. Specifically as PIO?

12 Q. Yeah.

13 A. No.

14 Q. All right. Is there any policy that you're  
15 aware of within the police department that  
16 says a person providing you with information  
17 as a public information officer is supposed  
18 to verify the identity of the person who is  
19 the subject of the information relayed to  
20 you?

21 MS. FEHL: Object to the form.

22 A. Rephrase our question.

23 Q. What about my question?

1 A. Can you repeat your question?

2 Q. I'll try.

3 MS. FEHL: Maybe if you could break it  
4 down.

5 Q. Is there a policy within the police  
6 department that upon arresting somebody, an  
7 officer is supposed to verify by some means  
8 the identity of the person arrested?

9 A. Yes.

10 Q. Is that a written policy?

11 A. Well, you learn in the academy what you're  
12 supposed to do when you make contact with a  
13 person.

14 Q. And what are you supposed to do?

15 A. You get their -- gather their information,  
16 run that information through NCIC.

17 Q. When you say gather the person's information,  
18 what information does that consist of?

19 A. You're going to ask him the name and possibly  
20 the date of birth. If at all possible, you  
21 might get their Social Security number.

22 Q. Any other information?

23 A. No.

1 Q. And then you said you run that through the  
2 NCIC?

3 A. Which would be channel 2.

4 Q. And what happens next after you run it  
5 through NCIC?

6 A. After you run it through NCIC, the dispatcher  
7 will come back and let you know whether this  
8 person has warrants or anything on them or  
9 not.

10 Q. Okay. Under this policy we're talking about,  
11 are there any other steps an officer is  
12 supposed to take to confirm an individual's  
13 identity?

14 A. Not to my knowledge.

15 Q. Now, using this situation or this information  
16 you just gave me as far as the policy, let's  
17 suppose the person the officer is arresting  
18 gives a fake name. How would that  
19 information be revealed or become known?

20 A. Repeat your question.

21 Q. The officer stops a person on the street and  
22 says I need your name, date of birth, Social  
23 Security number, runs it through NCIC and it

1 and that's when he wanted them.

2 Q. Okay. All right. Are you familiar with the  
3 Law Enforcement Tactical System?

4 A. Yes, I'm familiar with it.

5 Q. Is that known as LETS?

6 A. Correct.

7 Q. What is LETS?

8 A. Law Enforcement Tactical System.

9 Q. Right. But a little bit more specific,  
10 what's its purpose?

11 A. It's an investigative tool. We go in the  
12 LETS, and we can pull up detailed information  
13 on persons. And we use it as an  
14 investigative tool.

15 Q. Is there a policy at the MPD as to when LETS  
16 can be used?

17 A. You can use it as an investigative tool. I  
18 haven't seen anything in writing as to when  
19 you can use LETS. You might have a  
20 disclaimer with LETS when LETS can be used.

21 Q. And LETS accesses, I assume -- and let me ask  
22 you this. I assume LETS accesses some  
23 information somewhere where this information

1                   is retrieved; is that right?

2                   MS. FEHL: Object to the form.

3                   A. Repeat your question.

4                   Q. Yeah. Okay. The information that LETS  
5                   retrieves comes from where?

6                   A. I have no idea, sir. You'd have to get with  
7                   LETS and see where they ascertain that  
8                   information.

9                   Q. So you don't have any idea where their  
10                   information is coming from?

11                   A. That's in the LETS system.

12                   Q. Right.

13                   A. No, I don't know where they get their  
14                   information from, but I know it's there.

15                   Q. It's not hooked into the Department of Public  
16                   Safety's drivers records information?

17                   A. Specifically, I don't know where they get  
18                   their information from. I could be telling  
19                   you something wrong if I start to assume  
20                   where they got it from. So I just take the  
21                   system as what it's worth, and I use the  
22                   information that we have on it.

23                   Q. Is there like a main computer where you can

1 access LETS or can everybody access it  
2 through their individual computers?

3 A. If you're in an investigative division, I  
4 think you should be able to get it through  
5 your terminal; but you have to be given  
6 access to it.

7 Q. And who is given access to it?

8 A. It should be someone in computer information  
9 or planning and technology division.

10 Q. Can you access LETS?

11 A. Can I access it?

12 Q. Yes.

13 A. Yes.

14 Q. Can a police officer, if he's needing  
15 information, go in and access LETS?

16 A. Not necessarily because he has to have a  
17 password to get in it.

18 Q. Is there a certain rank where you're given a  
19 password, or how are passwords determined as  
20 far as who can access LETS?

21 A. Generally, if you're in an investigative  
22 field, you'll be given access. As far as  
23 just general officers, I can't answer that

1 question.

2 Q. Okay. You got any idea how long LETS has  
3 been used at the MPD?

4 A. No, I don't.

5 Q. Has it been used the entire time you've been  
6 there?

7 A. I don't know if it was used in '94 or not.

8 Q. How far back do you recall it being used?

9 A. When I came to the detective division in '04,  
10 I still can't recollect whether it was being  
11 used or not then.

12 Q. And as far as the use of LETS, have you been  
13 trained or given guidelines on when you can  
14 using the system?

15 A. Yes.

16 Q. And how was that relayed to you?

17 A. Through a person that trained me. This is  
18 when we use LETS. When you need to find out  
19 additional information on a person that we  
20 might not have in our data base at the PD, we  
21 log on to LETS.

22 Q. Were there any limitations on retrieving  
23 information such as did the person have to be

4           A. Specifically, the limitations, I can't say if  
5           it was arrested, because we might just be  
6           investigating a case, and they haven't been  
7           arrested; and they just might be a person of  
8           interest. You have to get some type of  
9           intelligence on them.

10 Q. Have you ever retrieved photographs through  
11 the LETS system?

12 A. Yes.

13 Q. Do you know where those photographs come  
14 from?

## 15 A. LETS system.

16 Q. I mean do you know where they're coming from,  
17 the source of the photograph, other than  
18 coming through the LETS system?

23 O. Can you think of any reason -- if we suppose

IN THE UNITED STATES DISTRICT COURT FOR  
THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

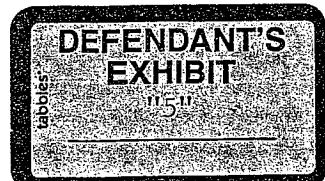
GWENDOLYN P. MCQUIRTER, and )  
CHARLES E. MCQUIRTER, )  
Plaintiffs, )  
v. )  
CITY OF MONTGOMERY, )  
K.C. BENTLEY, and RON COOK, )  
Defendants and Third-Party Plaintiffs, )  
v. ) Case No. 2:07-CV-234-MEF-WC  
TIFFANY MICHELE RILEY, and )  
ROOSEVELT PERKINS, )  
Third-Party Defendants. )

**AFFIDAVIT OF MARK DRINKARD**

Before me, the undersigned authority, personally appeared Mark Drinkard, who is known to me and who, being first duly sworn, deposed on oath, and says as follows:

My name is Mark Drinkard and I am over nineteen (19) years of age. I am currently employed as a Lieutenant with the Planning and Technology Bureau of the Montgomery Police Department which is assigned to the Administrative Division. It is in that capacity that I state the following:

1. I am the Agency Information Security Officer "AISO" for Law Enforcement Tactical Systems "LETS" which is provided by the Alabama Criminal Justice Information Center "ACJIC" and used by the Montgomery Police Department.



2. LETS provides a database obtained from many different agency records such as records from the Bureau of Vital Statistics, the Administrative Office of the Courts, the Department of Public Safety, and the Department of Revenue.

3. In order for someone to receive LETS access they must sign up and request admission from AlaCop. This site will then send me an email showing the requestors name and departmental information.

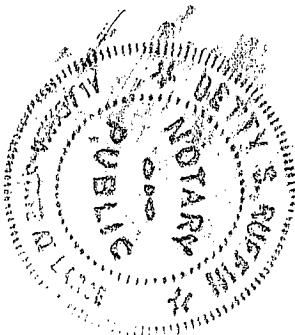
4. Once I have granted admittance to LETS, the requestor can choose their password to activate the system. All access to the system is then tracked by the Alabama Criminal Justice Information Center "ACJIC".

5. Our records indicate Lieutenant Ron Cook and Corporal Kristen Bentley have been granted access to use LETS.

I have read the above and foregoing affidavit consisting in total of two (2) pages and state that it is true and correct to my present knowledge and information.

Lt Mark Drinkard 086  
Lt. Mark Drinkard

SWORN to and SUBSCRIBED before me this the 30th day of October, 2007.



Betty S. Ruffin  
Notary Public  
My Commission Expires 10-15-08